

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT GEREMINO,

Plaintiff,

**REPORT AND
RECOMMENDATION**

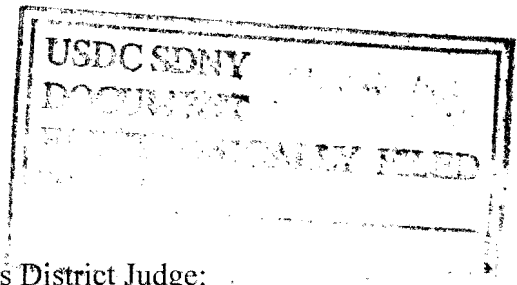
-against-

10 Civ. 369 (PKC)(GAY)

TOWN OF CLARKSTOWN,
RAYMOND LASCHET

Defendants.

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TO THE HONORABLE P. KEVIN CASTEL United States District Judge:

I. BACKGROUND

Plaintiff Robert Geremino filed this action on January 15, 2010 alleging various civil rights violations. During a pretrial conference held before former District Judge Stephen C. Robinson on July 22, 2010, the application of counsel for plaintiff to withdraw as counsel of record was granted. The case was then referred to the undersigned for general pretrial supervision. By Order dated July 27, 2010, plaintiff Geremino was given 45 days to retain new counsel or proceed *pro se*. No new attorney entered the case on behalf of the plaintiff.

By Order to Show Cause dated September 28, 2010, the undersigned was given until October 29, 2010, to show cause why the complaint should not be dismissed for failure to serve the complaint within the 120 days allowed by Fed.R.Civ.P. 4(m); or show good cause for an extension of time to serve. This Court did not receive any response from the now *pro se* plaintiff.

CMD
11-23-10
DH

II. DISCUSSION

Fed.R.Civ.P. 4(m) allows a Court, on its own motion after notice, to dismiss an action if the defendant has not been served within 120 days after the complaint has been filed. Here, the complaint was filed on January 15, 2010 and a review of the docket sheet shows that no service has been made to date. The notice required by Rule 4(m) was provided when the Order to Show Cause was issued on September 28, 2010. See Thompson v. Maldonado, 309 F.3d 107, 110 (2d Cir. 2002). Plaintiff did not respond.

Accordingly, the undersigned respectfully recommends that complaint should be dismissed, without prejudice, for failure to serve defendants with the complaint in accordance with Rule 4(m).

CONCLUSION

It is respectfully recommended that the complaint should be dismissed, without prejudice.

NOTICE

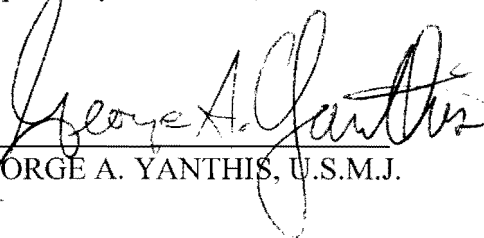
Pursuant to 28 U.S.C. § 636(b)(1)(c), as amended, and Rule 72(b), Fed.R.Civ.P., the parties shall have fourteen (14) days from the receipt of this Report to serve and file written objections to this Report and Recommendation. If copies of this Report are served upon the parties by mail, the parties shall have seventeen (17) days from receipt of this Report to file and serve written objections. Fed.R.Civ.P. 6(d). Such objections, if any, shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable P. Kevin Castel at the United States District Court, Southern District of New York, 500 Pearl St., New York, New York 10007, and to the chambers of the undersigned at the United States District Court, Southern District of New York, 300 Quarropas St., White Plains, New York 10601.

Failure to file timely objections to this Report and Recommendation will preclude later

appellate review of any order of judgment that will be entered. See Calder v. Onondaga County,
517 F.3d 601, 604 (2d Cir. 2008).

Respectfully Submitted,

Dated: November 23 2010
White Plains, New York



GEORGE A. YANTHIS, U.S.M.J.